MEDICAL JURISPRUDENCE†

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California Workmen's Compensation Act As It Affects Physicians and Surgeons

This is the first of a series of articles on the status of California physicians and surgeons under the State Workmen's Compensation Act, with particular attention directed to the fees paid physicians and surgeons in industrial injury cases and the functions of the Industrial Accident Commission in connection therewith. Articles on this subject will be contained in this column in succeeding issues.

The Workmen's Compensation Act is now contained in the *California Labor Code*. Under the provisions of *Labor Code*, Sec. 4600, a duty is imposed upon all employers in cases of industrial injuries to provide the injured employee with such medical, surgical, and hospital treatment as is reasonably required to cure or relieve from the effects of the injury. The employee is entitled to receive all medical treatment which reasonably is necessary to restore him to a physical condition permitting the resumption of the duties of his employment. In the first instance, the employer has the right to select the physician; but if an employee so requests, the employer must tender him one change of physicians, nominating for this purpose at least three additional practicing physicians from which the employee may choose.

To protect the physician and surgeon rendering services in Workmen's Compensation cases, *Labor Code*, Sec. 4903 provides that the Industrial Accident Commission may determine, and allow as a lien against any amount awarded to the injured employee by way of compensation, the reasonable value of medical and hospital services rendered. Also the Industrial Accident Commission is vested with jurisdiction over any controversy relating to, or arising out of, the provisions of the Workmen's Compensation Act with respect to medical care, unless an express agreement fixing the amount to be paid for medical, surgical, or hospital treatment has been made between the parties or institutions rendering such treatment and the employer or his insurer. Section 4604 of the *Labor Code* provides that controversies between employer and employee arising over medical and hospital treatment shall be determined by the Industrial Accident Commission upon the request of either party. It was held in *Independence Indemnity Company vs. Commissioner*, 2 Cal. (2d) 397, that the Industrial Accident Commission has jurisdiction to hear a proceeding originally commenced by a physician to recover the reasonable value of his services if the injured employee is made a party to the proceeding. In such proceeding, or in any proceeding, before the Industrial Accident Commission either commenced by employee, employer, or physician, the Commission has express authority under *Labor Code*, Sec. 4907 to determine what constitutes a reasonable amount for medical and hospital expenses in any specific case.

Having full power and jurisdiction to determine the reasonable value of medical or surgical services in industrial accident cases, the Industrial Accident Commission, in 1913, when the Workmen's Compensation Insurance and Safety Act was first enacted, adopted a fee schedule to provide a standard or guide for determining the reasonable value of medical and surgical services rendered for those cases which might be brought before the Commission. The fee schedule adopted in 1913 by the Commission was revised to a small extent in 1920, but no further action was taken by the Commission until September, 1941, when the fee schedule, as originally adopted in 1913 and amended in 1920, was readopted. Therefore, the existing fee schedule under which awards are being made currently to physicians and surgeons in the State for services rendered in industrial accident cases, has been in existence unchanged for 24 years, with a number of the items remaining unchanged for 31 years, with the exception of the temporary surcharge order (limited to the Duration) which we will deal with in a succeeding article.

The existing fee schedule states that it shall be considered and treated as a minimum schedule; but in practice it is used as a statement of maximum fees in all awards made by the Industrial Accident Commission, and likewise it is used as a guide for maximum fees by private employers and their insurance carriers in compensating physicians employed by them to render services to injured employees.

The California Medical Association is presently engaged in an effort to procure the adoption by the Industrial Accident Commission of an entirely new fee schedule which will afford physicians and surgeons reasonable and adequate compensation for their services in cases of industrial injury.

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions, and analyses of legal points and procedures of interest to the profession.

Deaths on the battlefield are not the chief costs of war. Battle deaths comprise only 1 per cent of the armed forces per annum. Armies include about 10 per cent of the population of warring countries. Disease rates are about one per cent per annum. Thus diseases kill ten times more than battles, even in countries at war. Civilian mortality and morbidity are of military importance. The sanitary facilities that protect our population from the diseases that spread through inadequate water, sewage and food hygiene must be maintained and extended. The spread of tuberculosis and other infectious diseases should be prevented wherever practicable. . . . These are all important war measures that should rank with military preparations in our national policy.—Lt. Comdr. Emil Bogen, MC, U. S. N. R., *Amer. Rev. of Tbc.*, March, 1944.